

Appl. No. : 10/632,327
Filed : August 1, 2003

REMARKS

Applicants respectfully submit that the amendments add no new matter and are fully supported by the application as originally filed.

Amendments to the Claims and Specification

Claims have been amended.

Applicants respectfully submit that the amendments add no new matter and are fully supported by the application as originally filed.

Newly Added

No new claims have been added.

Rejections under 35 U.S.C. §102(b)

8. The Examiner has rejected Claims 13, 18, 21 and 24 under 35 U.S.C. §102(b) as being anticipated by Magyar et al. (U.S. Pat. 4,613,446). Claim 24 has been cancelled.

The Examiner maintains that Magyar anticipates Claims 13 since the upper pH limit of 8.5 of Magyar could read on the “greater than about 10” of Claim 13. Claim 13 has been amended to eliminate the word “about”. Now the upper pH limit of 8.5 of Magyar does not read on the “pH of 10 or greater” limitation of the instant invention. Therefore, Magyar does not anticipate amended Claim 13 and Claims 18, and 21, which depend upon Claim 13.

Accordingly, the rejection of Claims 13, 18, 21 under 35 U.S.C. §102(b) as being anticipated by Magyar et al. (U.S. Pat. 4,613,446) should be reconsidered and withdrawn.

9. The Examiner has rejected Claims 1, 3, 5, 7, 9-13, 16-18, 21, 24, and 27-31 under 35 U.S.C. §102(b) as being anticipated by Piltingsrud (U.S. Pat. 6,402,851). Claims 7, 12, 24, and 30 have been cancelled.

The Examiner notes that “the PVA pad of Piltingsrud does not contain organic solvents”. Claim 1 has been amended to include the limitation of “greater than 1% C₁₋₄ alcohol and less than 4% by weight total organic solvent.” Claims 9, 13, 27, and 31 have been similarly amended. Therefore, Piltingsrud does not anticipate amended Claims 1, 9, 13, 27, and 31 and Claims 3, 5, 10-11, 16-18, 21, and 28-29 which depend upon these claims.

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Accordingly, the rejection of Claims 1, 3, 5, 9, 13, 16-18, 21, 27-29 and 31 under 35 U.S.C. §102(b) as being anticipated by Piltingrud et al. (U.S. Pat. 6,402,851) should be reconsidered and withdrawn.

Rejections under 35 U.S.C. §103(a)

11. The Examiner has rejected Claims 14, 15, 19, 20, 22, 23, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Magyar as applied to the above claims, and in further view of Barger et al. (U.S. 6,562,142). Claims 25 and 26 have been cancelled. Neither Magyar nor Barger anticipate amended Claim 13. Claims 14, 15, 19, 20, 22, and 23 depend upon Claim 13. Accordingly, the objection to Claims 14, 15, 19, 20, and 23 is overcome and it is respectfully urged that it be withdrawn.

12. The Examiner has rejected Claims 1-14, 16-19, 21-22, 24-25 and 27-31 under 35 U.S.C. §103(a) as being unpatentable over Barnabas (U.S. 2003/0119705) as applied to the above claims. Claims 7-8, 12, 24-25, and 30 have been cancelled.

The Applicants submit herewith a Declaration under 37 CFR 1.132 including data and supporting statements that clearly establish the criticality of the having a pH of 10 or greater for low solvent compositions having less than 4% organic solvent having a vapor pressure less than 0.1 mm Hg (20° C).

Barnabas provides examples of only 6 compositions having basic pH (Q, R, S, T, Z1, Z2 following paragraph [0200] containing 0.12 to 0.22% surfactant, 0.1% sodium hydroxide, 2% propylene glycol n-butyl ether, 8% ethanol, 0.1% perfume and having a pH about pH 11. These compositions contain 10% solvent and 8% C₁₋₄ alcohol (ethanol). **There are no examples and no suggestion or expectation of success in Barnabas about the criticality of high pH levels for compositions of low levels of solvent to provide disinfectancy or sanitization.**

Barnabas teaches only three compositions that have antimicrobial effectiveness. These compositions are acidic with high solvent levels. These compositions are given in the Table in paragraph [0224]. These compositions have 0.22% C12-14 sulfobetaine (a surfactant), 0.05% C12-14 EO21 (a nonionic surfactant), 0.25-0.75% citric acid, 2% propylene glycol n-butyl ether (a solvent having vapor pressure less than 0.1 mm Hg (20°C), 8% ethanol (a solvent), 0.1% perfume, and 0.3% PHMB (a quaternary ammonium antimicrobial agent) and having a pH about 3.5.

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It is well settled law that in order to properly support an obviousness rejection under 35 U.S.C. § 103, there must have been some teaching **in the prior art** to suggest to one skilled in the art that the claimed invention would have been obvious. W. L. Gore & Associates, Inc. v. Garlock Thomas, Inc., 721 F.2d 1540, 1551 (Fed. Cir. 1983). More significantly,

The consistent criteria for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this [invention] should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art. . . .**Both the suggestion and expectation of success must be founded in the prior art, not in the applicant's disclosure . . .** In determining whether such a suggestion can fairly be gleaned from the prior art, the full field of the invention must be considered; for the person of ordinary skill in the art is charged with knowledge of the entire body of technological literature, including that which might lead away from the claimed invention.

(emphasis added) In re Dow Chemical Company, 837 F.2d 469, 473 (Fed. Cir. 1988).

In fact, Barnabas does not suggest or provide the expectation of success that high pH and low solvent compositions are able to achieve disinfection or sanitization. Accordingly, the objection to Claims 1-6, 9-11, 13-14, 16-19, 21-22, 27-29 and 31 is overcome and it is respectfully urged that it be withdrawn.

13. The Examiner has rejected Claims 15, 20, 23 and 26 under 35 U.S.C. §103(a) as being unpatentable over Barnabas as applied to the above claims, and further in view of Barger et al. (U.S. Pat. 6,562,142). Claim 26 has been cancelled. As stated above, Barnabas provides no suggestion or expectation of success for the limitations of amended Claim 13, upon which Claims 15, 20, and 23 depend. Accordingly, the objection to Claims 15, 20, and 23 is overcome and it is respectfully urged that it be withdrawn.

14. The Examiner has rejected Claims 1-14, 16-19, 21-22, 24-25 and 27-31 under 35 U.S.C. §103(a) as being unpatentable over Sherry et al. (U.S. Pat. 6,716,805). Claims 7-8, 12, 24-25, and 30 have been cancelled.

The Applicants submit herewith a Declaration under 37 CFR 1.132 including data and supporting statements that clearly establish the criticality of the having a pH of 10 or greater with low solvent levels of less than 4% organic solvent having a vapor pressure less than 0.1 mm Hg (20° C).

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There are no examples and no suggestion or expectation of success in Sherry about the criticality of a pH of 10 or greater and low levels of solvent to provide disinfectancy or sanitization.

In fact, Sherry does not suggest or provide the expectation of success that high pH and low solvent compositions are able to achieve disinfection or sanitization. Accordingly, the objection to Claims 1-6, 9-11, 13-14, 16-19, 21-22, 27-29 and 31 is overcome and it is respectfully urged that it be withdrawn.

15. The Examiner has rejected Claims 15, 20, 23 and 26 under 35 U.S.C. §103(a) as being unpatentable over Sherry as applied to the above claims, and further in view of Barger et al. (U.S. Pat. 6,562,142).

Claim 26 has been cancelled. As stated above, Sherry provides no suggestion or expectation of success for the limitations of amended Claim 13, upon which Claims 15, 20, and 23 depend. Accordingly, the objection to Claims 15, 20, and 23 is overcome and it is respectfully urged that it be withdrawn.

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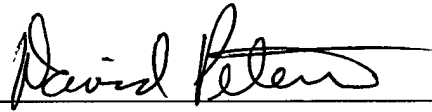
CONCLUSIONS

In view of the foregoing amendments and remarks, Applicants submit that the application is in condition for allowance. If, however, some issue remains, which the Examiner feels may be addressed by Examiner's amendment, the Examiner is cordially invited to call the undersigned for a brief discussion.

Please charge any additional fees, including fees for additional extensions of time, or credit overpayment to Deposit Account No. 03 2270.

Respectfully submitted,
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